1. S.B. CIVIL WRIT PETITION No. 1618/2004.
(Gopal Ram Vs. State of Rajasthan & ors.)

2. S.B. CIVIL WRIT PETITION No. 1638/2004.
(Suraja Ram Vs. State of Rajasthan & ors.)

DATE OF ORDER : 21.11.2007.

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr. DS Rajvi, for the petitioners.
Mr. Shyam Ladrecha, Addl.G.A., for respondents.

1. Heard learned counsels.

2. In these two writ petitions common question of law and facts arises, therefore, both these petitions are decided by this common order. For convenience, facts are taken from SB Civil Writ Petition No. 1618/2004.

3. This is unfortunate third round of litigation by these two petitioners who had failed to secure compensation against their land acquired without proper land acquisition proceedings being undertaken by the State Government and the land in question being handed over to military for developing the contonment area in District Bikaner, village, Anopsagar.

4. It would be proper to give a little history of the litigation in this regard which has been produced on record in the present writ petition also. Firstly, ***Dalit Munch, Bikaner*** approached this Court by way of Writ Petition No. 2233/85

which came to be allowed by this Court on 16.9.1991. The relevant part of the judgment is reproduced hereunder:-

> "On the factual aspect of the matter that the Government of Rajasthan had taken crores of rupees according to the petitioners which is Rs. 30 crores, from the Central Government for compensation and this amount is with the State exchequer and yet the amount which had been taken from the Central Government for compensation has not been paid to the members of the petitioners organisation who are persons belonging to scheduled castes, scheduled tribes and other backward classes, I may simply be mentioned that the amount, which had been taken by respondent No.2 and 3 for compensation, has not yet been paid and as such the State has denied honest and just claims to its own subjects viz. the members of the petitioners organisation whose land had been taken way back in the year 1983. In this case, it was clearly indicated through Annexure/2 itself that the notification issued by the State Government under Sec.4 of the Act has already been sent for publication. One fails to understand as to how and at what stage, the proceedings under the Rajasthan Land Acquisition Act which were decided to be started, were suddenly abandoned. In my opinion, merely because the land was offered as per Annex/2

to the cultivators whose land had been taken away need not be a ground for the purpose of not determining compensation in their favour because this is only an interim arrangement till the award is made. However, it appears that after passing the order Annexure-2, the fate of these persons was kept in oblivion and no further proceedings thereafter appear to have been taken under the Rajasthan Land Acquisition Act which were necessary to be taken.

However, it is now the military land which stands acquired and the same is also being used for cantonment areas, therefore, whether the proceedings under the Rajasthan Land Acquisition were followed or not, the acquisition is now complete and a fate accomplice. Therefore, no useful purpose would be served by directing the respondents to follow the proceedings under the Rajasthan Land Acquisition for the purpose of acquisition. The question remains only with regard to compensation to be paid to the members of the petitioners organisation. Therefore, ***I direct the respondents No. 2 to 4 to decide the question of compensation which may be payable to each of the persons whose land had been taken for the purpose of cantonment area***, particularly the persons whose names have been mentioned in

> Annexure/2 and looking to the quality of land and other considerations, the compensation which may be paid out of the amount which the State Government has already received from the Central Government. For this purpose, the concerned persons, members of the petitioners organisation ***or any other persons who were entitled to get the compensation or did not accept the alternative land will file their claims before the concerned authorities*** within a period of two months from the date the copy of the order is made available to the concerned authorities by the claimants and thereafter ***within a period of four months the claims shall be decided and the amount of compensation shall be determined in*** accordance with extent law and paid to such claimants.
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> **The writ petition is accordingly allowed** in the manner indicated above, with no order as to costs."
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> -sd-
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> (M.R.CALLA J.)

5. In pursuance of the said judgment, it is stated in the writ petition that certain persons were given the compensation in respect of their land acquired by the State but somehow, the petitioners were not given any compensation,

and therefore, have again approached this Court by way of three writ petitions namely; S.B.Civil Writ Petition No. 1510/99, 1511/99 and 1512/99 which came to be allowed by this Court on 7.5.99. The relevant part of the said judgment dated 7.5.99 is also quoted below:

> "The submission of Mr Rajvi is that the cases of all the petitioners are similar to that of Writ Petition No. 1232/98 and the prayer made in these petitions is that the S.D.O. (North) Bikaner be directed to determine the compensation and make payment of compensation.
>
> In view of the above, S.D.O. (North), Bikaner is directed to decide as to whether the petitioners or any of petitioners is entitled for compensation or not, ***if it is found that the petitioners or any of the petitioners is entitled for compensation then S.D.O. (North), Bikaner will pay compensation to them as early as possible within six months from today.***
>
> With these directions and observations these petitions are disposed of."

-sd-

(B.J.SHETHNA),J.

6. Thereafter, the S.D.O. (North) Bikaner again

rejected the claim of the petitioners for award of compensation vide order dated 15.12.1999 as time barred saying that the petitioners have not submitted any claim within the period given in the order of High Court dated 18.06.1991.

7. Thereafter, these three petitioners again approached this Court by way of Writ Petition namely, S.B.Civil Writ Petition No. 326/2001 (Surajaram Vs. State & ors.), 324/2001 (Keshar Singh Vs. State & ors.) and 325/2001 (Gopal Ram Vs. State & ors.) which again came to be allowed by this Court referring to previous judgments vide judgment dated 19.02.2003. It would be worthwhile to point out here that the contention of the State that the petitioners were not the persons interested or that the revenue records does not support the claims of the petitioners was specifically dealt with by this Court in the judgment dated 19.02.2003. It would be apposite to reproduce the portion of the said judgment dated 19.02.2003 also :

> "It appears that the learned S.D.O. (North), Bikaner, while acting as a Land Acquisition Officer did not consider the direction issued by this Court in the petitioner's earlier writ petitions No. 1510/99, 1511/99 and 1517/99 dated 7th May, 1999 under wrong impression

that the direction was issued by the High Court in the matter of the petitioners are dated 18th June, 1991, therefore, only on this ground alone the order dated 15th Dec., 1999 deserves to be quashed and set aside. It is relevant to mention here that the petitioners were not parties in the writ petition No. 2233/85 and no directions were issued in the matter of the petitioners by this Court in its order dated 18th June, 1991. ***Any limitation prescribed in the order dated 18th June, 1991 cannot apply to the petitioners in view of the order dated 7th May, 1999 passed by this Court in the writ petitions of the petitioners***.

Learned counsel for the petitioners relied upon the Division Bench judgment of this Court delivered in the case of Smt. Govind Kanwar Vs. State of Raj. & ors., reported in 2000 (3) RLR 537 wherein Division Bench of this Court, while dealing with the matter of claim of compensation with respect to ***the utilization of the land of a private person by the State Government without paying compensation, did not accept the technical pleas raised by the respondents appearing on behalf of the State***. Learned counsel for the petitioners also relied upon the Single Bench judgment of this Court in the case of Amring Vs. State of Raj. & ors., reported in 2002 WLC 478 wherein learned Single Judge of this Court held that the ***petitioners though***

trespasser yet in possession since 1958 still they are entitled for the compensation. Learned counsel for the petitioners also heavily relied upon the discrimination with which petitioners were treated on the basis of the ***order dated 15th July, 1998 passed by the same officer i.e. S.D.O. (North), Bikaner by which the case of certain persons who are similarly situated to the petitioners were recommended for grant of compensation whereas in reply to the writ petition, the respondents submitted that the petitioners have not acquired Khatedari rights*** in the land in dispute and therefore, they are not entitled for the compensation ***despite the fact that revenue records support the claim of the petitioners and in view of such documentary evidence***.

Be that as it may, ***the question remains is that the possession at the relevant time was of the petitioners, is not in dispute***. Their claim for entitlement to the compensation is required to be decided in pursuance of the order passed by this Court in Writ Petitions No. 1510/99, 1511/99 & 1517/99 and the claim of the petitioners could not have been rejected on the ground of not submitting the claim within the period of limitation. The S.D.O. (North), Bikaner was bound to comply with the order dated 7th May, 1999 and was also bound to determine the entitlement of the petitioners for compensation and

cannot discriminate the petitioners from the persons who are similarly situated to the petitioners particularly when the writ petitions of the petitioners were allowed by the order dated 7th May, 1999 only on the ground that they are persons similarly situated to the other persons.

Therefore, ***the writ petitions of the petitioners are allowed and the order of the*** S.D.O. (North), Bikaner (Land Acquisition Officer) is quashed and set aside. The S.D.O. (North), Bikaner ***is directed to decide the claim of the petitioners within a period of three months*** from the date of placing of the certified copy of this order before the said authority by the petitioners.

-sd-

(PRAKASH TATIA),J."

8. Despite the aforesaid clear judgment, SDO (North), Bikaner again dealt with the claim of these petitioners. He surprisingly dismissed the claim of the petitioners by the impugned order dated 3.7.2003 (Annex.21) on record. The relevant part of the said order of learned S.D.O, is also reproduced hereunder:

"जमाबन्दी सम्वत् 2016 की जमाबन्दी में किशना वल्द धूडा कोम नायक ख.न. 45/6 में 60.00 बीघा भूमि एक तरफा आवंटन है सही इन्द्राज संख्या 2010 से 2021 की जमाबन्दी में अंकित है। जमाबन्दी 2021 से 2024 में बजरिये निरनतर

इंतकाल प्रार्थी गोपालराम का नाम अंकित है। इसी प्रकार का उक्त वर्षों की गिरदावरी में है।

सम्वत् 2030 में यह राजस्व ग्राम उपनिवेशन विभाग के अन्तर्गत उपनिवेशन अधिनियम के बने प्रावधानों के अनुसार / साला आवंटन को समाप्त कर दिया गया। इस प्रकार से एक रकबा आवंटियों व कृषकों के अधिकारों को समाप्त कर दिया गया। ख.न 45/6 की 60.00 बीघा भूमि राजकीय भूमि हो गई। यही स्थिति आगामी वर्षों में भी रहा तथा वर्ष 1983 में इसी रूप में अर्थात् ख.नं. 45/5 की 60.00 बीघा भूमि जो की पूर्णतया राजकीय भूमि थी को सेना विभाग को आवंटित कर कब्जा सौंप दिया।

इस प्रकार से भूमि अवाप्ति के समय राजस्व ग्राम अनोप सागर की ख.न. 45 / 6 की 60.00 बीघा भूमि पूर्णतया राजकीय भूमि की तथा गोपालराम हितबद्ध व्यक्ति नहीं था।"

9. It is against this order that the two petitioners have again approached this Court by way of present writ petitions. It appears that the third petitioner did not approach the Court again namely Keshar Singh. Even by way of interim order passed in these two writ petitions by co-ordinate Bench it was observed by the Court that the learned S.D.O., (North), Bikaner was flouting the court's order and therefore, he was directed to appear personally before the Court. The interim order passed by the co-ordinate Bench on 2.5.2007 may be quoted below:

"S.B.CIVIL WRIT PETITION NO.1618/2004

S.B.CIVIL WRIT PETITION NO. 1638/2004

Date : 02.05.2007

HON'BLE MR JUSTICE GOPAL KRISHAN VYAS

Mr. D.S.Rajvi, for the petitioners.
Mr. S.N.Tiwari, Dy.Govt. Advocate.

It is unfortunate that this Court twice passed the orders with regard to petitioner's claim in the acquisition proceedings. It was specifically mentioned that similarly situated persons were granted compensation, therefore, his case may also be decided for his claim.

I have perused the order impugned Annexure-21.

It is observed in the operative portion of the order dated petitioners Gopal Ram was not recorded tenant on the date of acquisition of the land.

I have also perused the revenue record, Jammabandi with regard to Khatedari of the petitioners as well as other documents which are filed alongwith writ petition as Annexure-1 to Annexure-7.

It is obvious from the record that petitioner's land was recorded in the revenue record in the name of his father and in his name. But the S.D.M. (North), Bikaner while ignoring these documents passed the impugned order denying the legal claim of the petitioners. It is also obvious that similarly situated persons were granted

compensation and their case was recommended vide Annexure-15.

In this view of the matter, it appears from the record that ***Sub Divisional Magistrate (North), Bikaner is flouting the Court's orders therefore, he is directed to appear before this Court on 15th May, 2007***. The learned Dy. Govt. Advocate is directed to inform the concerned person who had passed the order Annexure-21 to remain present in the Court.

Put up on 15th May, 2007.

-sd-

(GOPAL KRISHAN VYAS),J. "

10. Thereafter, also though the said SDO was also personally present in the Court on 5.7.2007, it appears that the learned SDO did not take enough care and complying with the directions of the Court on earlier occasions and computing the amount of compensation did not disburse the same to the petitioners.

11. Mr. Rajvi, learned counsel for the petitioners urged that despite the fact that this Court right from the beginning in 1991 consistently held that these persons dispossessed from the land in question on account of acquisition of land and

handing over the same to Military, they were "persons interested" and they have been dispossessed from the said land in question, the learned S.D.O., by the impugned order curiously held that these petitioners were not the "persons interested" in the land in question and since the revenue records indicated that the said petitioner Gopal Ram had only one year cultivatory possession in Samvat Year 2030 therefore, after the lapse of such one year, the land automatically vested in and belonged to the State Government, and therefore, the petitioners was not entitled to any compensation for the land from which he was dispossessed.

11. Learned Government Advocate tried to support the impugned order of the learned S.D.O on the ground stated in the said order itself quoted above.

12. Having heard the learned counsel for the parties, this Court is of the opinion that it is indeed unfortunate that the said Land Acquisition Officer S.D.O. (North), has embarked upon an enquiry de novo ignoring the clear observations and findings of this Court in the third round of litigation in the judgment dated 19.2.2003 in which the contention of the State that the revenue records did not support the claims of the petitioners was specifically dealt with and still the Court found

that their possession over the land was not disputed and they were dispossessed from the land in question, and therefore, they were the "persons interested" in the said land and were entitled to the compensation. The matter was remanded to learned S.D.O., giving a period of three months merely with a view to compute the compensation and pay the same to these petitioners.

13. In fact, the language of the said judgment as well as whole tenor of it goes to show that such further enquiry was not permissible but despite this referring to observations in the previous judgment dated 7.5.99, the learned S.D.O., assumed this jurisdiction and holding such enqiry de novo and on a strange ground namely that the petitioner's right over the land in question was only of one year cultivatory possession, negatived their claims for compensation. A bare perusal of some of the revenue records produced by the petitioners as Annex.1 in this writ petition clearly indicates that earlier the name of father of the present petitioners Gopal Ram namely Kishano S/o Dhudaji B/C Nayak was incorporated in the Zamabandi for the samvat year 2017 and for Khasra No.45/16 ad measuring 60 bighas for the same land in question and thereafter, the name of the petitioners Gopal Ram came to be incorporated in the revenue records vide Annex.3 Khasra Girdavari for the Samvat Year 2025 (Page 46) in which the

name of the agriculturists is shown to be Gopal S/o Kishna for the same Khasra No. 45/16 ad-measuring 60 bighas. This prima facie establishes the right of the petitioners over the land in question both cultivatory possession and a khatedari right entitling them for the compensation. Since, admittedly the State has disbursed compensation to even Gair Khathedars and persons in the cultivatory possession in pursuance of the first determination in this regard quoted above in the case of Dalit Manch pursuant to judgment dated 16.9.1991, there appears to be no valid rhyme or reason behind refusing such compensation to the present petitioners on the ground of their one year cultivatory possession as stated by the learned SDO. This clearly, therefore, appears to be an extraneous reason which prevailed with the learned SDO in rejecting the claim of petitioners totally ignoring the law and clear mandate of this Court in these three judgments. This act of learned SDO of findings some way or the other to bye-pass the directives of this Court in three consistent judgments which admittedly became final and have not been upset by any appellate or superior court, can hardly be appreciated and this Court could have imposed exemplary costs on the learned SDO for passing the said order in the aforesaid manner, however taking a liberal view in this regard and giving the benefit of “good faith” clause in passing such orders by quasi judicial authority, this

Court refrain from doing so at this stage. Nonetheless, it is felt that the said order passed by learned SDO on 3.7.2003 (Annex.21) was not at all justified and cannot be sustained in the light of previous judgments of this Court and facts obtaining in the present case.

14. Consequently, these writ petitions are allowed and the impugned order of learned SDO dated 3.7.2003 (Annex.21) is quashed and it is directed that the compensation for the land in question shall be paid to these two petitioners within a period two months from today after determination of the said compensation amount by learned S.D.O., (North), Bikaner before the said period of two months. The petitioners may appear before the S.D.O., on 10.12.2007 in the first instance in this regard. It is further directed that if such actual amount of compensation on the basis of measurement of land is not determined and paid by the said learned S.D.O., within two months from today i.e. on or before 31.1.2008, a cost of Rs. 200/- each day of the delay after said date would be payable by the learned S.D.O. personally and he may also be held liable for action under the contempt law.

(Dr.VINEET KOTHARI),J.

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